

Free recording in accordance with
California Government Code
Sections 6103 and 27383

Recording requested by
and when recorded mail to:

Multifamily Housing Program
Department of Housing and
Community Development
P.O. Box 952052
Sacramento, CA 94252-2052

**LEASE RIDER
AND
ESTOPPEL AGREEMENT**

(Ground Lease)

This Lease Rider and Estoppel Agreement ("Agreement") is made and entered into as of _____, 200__, by and among _____, a _____ ("Landlord"), _____, a California limited partnership ("Lessee"), and the Department of Housing and Community Development, a public agency of the State of California ("Department") in consideration of the following facts and circumstances:

- A. Landlord is the fee simple owner of that certain real property described in Exhibit A attached hereto and incorporated herein ("Property");
- B. Landlord and Lessee entered into the following ground lease of the Property: that certain Ground Lease dated _____, ____ and recorded [*to be recorded*] in the official records of _____ County _____ as Instrument No. _____;
- C. Pursuant to the Lease, Lessee has agreed to develop [*acquire*], construct [*rehabilitate*], own, operate and manage a rental housing development on the Property consisting of not less than _____ (__) residential rental units ("Development");
- D. The construction [*rehabilitation*] of the Development will be financed in part by the Loan from the Department described below. As a result of such construction and the resultant improvements to the Property, Landlord will benefit thereby;

F. Department has agreed to loan an amount not to exceed _____ and no/100 Dollars (\$_____.00) ("Loan") to Lessee pursuant to the Multifamily Housing Program ("MHP"). The Loan is subject to numerous terms and conditions, including without limitation, the execution and delivery of this Lease Rider and Estoppel Agreement;

G. The Loan will be evidenced by a Promissory Note ("Note") and secured by a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing ("Trust Deed") on Lessee's interests in the Property; and

H. Lessee and Landlord have requested that the Department accept the Lease as security for the Loan. In order to induce the Department to make the Loan, Landlord and Lessee have agreed to enter into and record this Agreement for the benefit of Department, its successors, and assigns.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants hereinafter contained, Department, Lessee and Landlord hereby agree as follows:

1. Leasehold. As used herein, "Leasehold" means all of Lessee's interest in the Property described in Exhibit A, in the Development, in all improvements now or hereafter located on the Property, all options contained in the Lease or granted in connection with the Lease, and all other rights of Lessee under the Lease.

2. Representations and Warranties of Landlord. Landlord hereby represents and warrants to Department as follows:

a. Transfers by Landlord. Landlord has not assigned, mortgaged, or otherwise hypothecated or transferred, or agreed to assign, mortgage or otherwise hypothecate or transfer, its interest in the Property and the Development in whole or in part, except as shown in the ALTA Lender's policies of title insurance issued to and accepted by Department in connection with the Loan and except as security for loans to Lessee approved in writing by the Department. Landlord will not renew, modify, consolidate, replace or extend any document securing or creating any such assignment, mortgage or other transfer without the prior written approval of the Department.

b. Status of Lease.

(1) Landlord is the current Lessor under the Lease. The Lease is in full force, the Lease is not void, voidable or terminable at the option of any party thereto or of any other person or entity claiming an interest in or to such Lease or the Property, and there has been no default thereunder on the part of Lessee, nor has any event

occurred which, with the giving of notice or the passage of time, or both, would be an event of default thereunder. Landlord has not been informed of and has not otherwise received notice from Lessee or from any other person or entity concerning any alleged default on the part of Landlord under the Lease. There exist no defenses or offsets to enforcement of the Lease by Lessee.

(2) Any consent or approval of any third party (including any lender) that is required to deliver this Agreement has been obtained.

(3) No alterations, improvements or additions now exist on the Property that have not been approved by the Landlord.

c. Other Agreements. All terms and conditions of the Lessee's tenancy under the Lease are set forth in the Lease and there have been no further or other supplements, amendments, modifications or extensions thereof except those submitted to and approved by the Department. Nothing in this Lease Rider is intended to waive, supercede, modify or terminate any provision of the Lease granting rights to the Department as a Mortgage Lender. Pursuant to the requirements of MHP, Lessee and Department have entered into a Regulatory Agreement (including any amendments thereto, the "Regulatory Agreement"), governing the use, occupancy, operation, management and ownership of the Development. Landlord and Lessee hereby waive any such provisions of the Lease in conflict with or which would frustrate compliance with the Regulatory Agreement in favor of the terms of the Regulatory Agreement.

d. Lease Term. The date of the commencement of the Lease term is _____, ____ and will end on _____, _____. All conditions precedent to the effectiveness of the Lease or the exercise of any of Lessee's rights thereunder have been fully satisfied. Lessee has the following options to extend the lease term: _____.

e. Development. The Development constructed, or to be constructed, by Lessee on the Property satisfies all requirements affecting the design, use or characteristics of such Development imposed by Landlord under the Lease.

f. Insurance. All notices, certificates, binders, endorsements, copies of policies, and receipts required under the Lease have been delivered and approved by Landlord.

3. Cancellation, Transfer of Interest.

a. Landlord and Lessee agree that so long as Department, its successor or assigns holds the Trust Deed and Regulatory Agreement encumbering the Property, no termination of the Lease by Lessee, and no subordination, cancellation, surrender, amendment or modification of the Lease shall be effective without the prior written

consent of Department.

b. Landlord agrees that it shall not transfer, convey, sell, hypothecate, assign, encumber or permit any liens against its interest, or any portion thereof, in the Property or the Development without the prior written approval of the Department, except as security for loans to Lessee approved in writing by the Department.

4. Consent to Assignment, Payment of Rent.

a. Landlord hereby consents to and approves the following to the extent such consents or approvals are required under the Lease:

(1) Lessee's encumbering the Lease, the Leasehold and the Development by the Trust Deed; possession of the Property and any Development thereon by Department or by a receiver under the Trust Deed; and sale of the Leasehold and the Development by foreclosure under the Trust Deed or transfer by deed in lieu of foreclosure;

(2) Assignments to Department of subleases and rents from subleases; and

(3) Assignment of all or any part of any interest in the Leasehold to any purchaser at a foreclosure sale under the Trust Deed or to any transferee of a deed in lieu of foreclosure (such purchaser or transferee collectively a "Transferee"), and to subsequent transfers without restriction (all such assignments, transfers, and subsequent transfers referred to in this Agreement as a "Transfer"). Any such Transferee, upon the Transfer of all its interest in the Development and the Leasehold, shall be relieved of all liability under the Lease accruing after date of such Transfer. An interest in a deed of trust on the Leasehold securing any unpaid part of the purchase price in connection with any such Transfer shall not be considered retention of an interest in the Leasehold for purposes of this subsection.

b. Nothing in this Agreement, in the Trust Deed or in the Lease shall impose on Department the obligations of Lessee under the Lease or require Department to assume the Lease unless the Department forecloses on the Leasehold under the Trust Deed or accepts an assignment or deed in lieu of foreclose.

c. Landlord and Lessee agree that, except as otherwise approved in writing by the Department, any rent paid to Landlord under the Lease shall be deemed to be distributions of Lessee under the Regulatory Agreement and shall be subject to the limits on distributions set forth therein. Landlord shall immediately pay to the Department any rent payments received by it in excess of the amount of distributions permitted under the

Regulatory Agreement.

5. Notice of Defaults; Termination Notice.

a. Notice and Cure. Landlord agrees to give Department immediate notice of all defaults by Lessee under the Lease (whether or not notice thereof is required under the Lease), and to give simultaneously to Department a written copy of all notices and demands which Landlord gives to Lessee, and no notice or demand under the Lease shall be effective unless and until notice is given to Department. Any notice of default under the Lease or this Agreement shall describe the default(s) with reasonable detail. Department shall have the right, but not the obligation, to cure any breach or default within the time period given in the Lease; provided that, if such notice to Department is not given or is delayed for any reason, the period of time within which Department may cure any such breach or default shall commence upon receipt by Department of such notice. Landlord and Lessee authorize the Department to enter the Property for the purpose of preventing defaults or exercising its right to cure and other powers given Department under the Trust Deed, this Agreement or the Lease.

b. Termination Notice. After the expiration of the grace period given Lessee under the Lease to cure the default, Landlord shall not terminate the Lease on account of such default but shall give Department a written notice (a "Termination Notice") that Lessee has failed to cure the default within the grace period and that, on account thereof, Landlord intends to terminate the Lease, which notice shall set a termination date not earlier than sixty (60) days after Department's receipt of the Termination Notice. No Termination Notice shall be effective to terminate the Lease if:

(1) Except as provided in section 5.c., within sixty (60) days after receipt of the Termination Notice, Department cures any default which can be cured by payment or expenditure of money or without possession of the Property; or provides reasonable assurance and undertakings for the cure of such default; or

(2) Department commences and diligently pursues to completion proceedings for foreclosure and sale under the Trust Deed or assignment or transfer in lieu of foreclosure.

c. Defaults Not Susceptible to Department Cure. Department shall not be required to perform any act which is not susceptible to performance by Department, such as to cure a filing or condition of bankruptcy or insolvency or to cure or commence the cure of any default which is Lessee's failure to pay any lien, charge or encumbrance which is junior in priority to the Trust Deed, or to pay any amount owed under an indemnity of Landlord by Lessee based on an event which occurred before Department took possession of the premises.

d. Landlord's Payment of Loan Payments. Landlord agrees that if Landlord cures Lessee's failure to make any payment due under the Loan, it shall seek reimbursement of amounts so paid solely from Lessee and Department shall have no obligation to pay such amounts to Landlord if Department exercises its rights hereunder or under the Lease to cure Lessee's default of the Lease.

e. Waiver of Breach or Default. On transfer of the Leasehold at any foreclosure sale under the Trust Deed or by acceptance of a deed in lieu of foreclosure, all violations, defaults and breaches by Lessee under the Lease, including, without limitation, nonpayment of rent or other amounts payable under the Lease, shall be deemed cured and Department or other Transferee shall be entitled to the New Lease as described in section 6 below without incurring or assuming any liability or obligation of, or claim against, Lessee under the Lease.

f. Enforcement Not a Breach. No action taken by the Department to enforce its rights under any of the documents governing the Loan against either the Landlord or the Lessee, or both, including, without limitation, any actions taken to collect any amounts due and owing to Department or any action to appoint a receiver for the Development or to otherwise protect the security of the Loan, shall constitute or result in a breach or violation of the Lease.

6. New Lease.

a. Conditions. Section 5 hereof notwithstanding, Landlord agrees to comply with the requirements of section 6.b., if the following conditions specified in this section 6.a. apply:

(1) The Lease is terminated for any reason whatsoever or if Department forecloses under the Trust Deed or accepts a deed in lieu of foreclosure; and

(2) Department or other Transferee, whether or not such party has assumed the Lease, requests Landlord in writing to enter into a new lease of the Property within forty-five (45) days after (a) the Department completes a foreclosure under the Trust Deed, or (b) the Department accepts a deed in lieu of foreclosure, or the end of the cure period provided to the Department in the Termination Notice.

b. Obligations. If the conditions specified in section 6.a. have been satisfied, Landlord shall perform each of the following obligations:

(1) Upon receipt of the request for New Lease described in subsection 6.a.(2) above, Landlord shall enter into a new lease ("New Lease") of the Property with Department, its nominee, or its successor-in-interest or other Transferee, for the

remainder of the term of the Lease, effective as of the date of the conveyance pursuant to a foreclosure sale or of a deed-in-lieu. In lieu of any rent or rents payable to the Landlord stated in the Lease, the New Lease shall have a total annual rent equal to one dollar (\$1.00) and without liability for other or additional rent payments to Landlord. The New Lease shall be otherwise on the terms, and with the provisions, covenants, options and agreements contained in the Lease or granted by the Landlord in connection with the Lease all as modified or supplemented by this Agreement.

(2) Landlord shall by grant deed convey to Department, its nominee or its successor-in-interest or other Transferee, all title and interest to the Development, if any, which may become vested in Landlord as a result of any termination of the Lease or foreclosure of the Trust Deed or conveyance of Lessee's interest by deed in lieu of foreclosure.

(3) Landlord shall assign to Department, its nominee, or its successor-in-interest or other Transferee, all of Landlord's interest, if any, in all existing subleases of all or any part of the Property and all attornments given by the sublessees.

c. Priority. The Leasehold estate and the title (if any) in the Development granted to Department, its nominee or its successor-in-interest under this section 6 shall be prior to any mortgage or other lien, charge or encumbrance on the Property, except as approved in writing by the Department or as shown in the ALTA Lender's policies of title insurance issued to and accepted by the Department.

7. Successors to Department. Subject to section 4 hereof, if the Leasehold is transferred by a foreclosure sale under the Trust Deed or by a deed in lieu of foreclosure, Landlord shall recognize the Transferee as the tenant under the Lease. Anything in the Lease notwithstanding, the rights and benefits of Department under this Agreement shall benefit and may be exercised by any Transferee or by the holder of any mortgage or deed of trust which may be given to secure a portion of the purchase price in any sale by Department or its successor(s) after Department acquires the Leasehold or enters into a new lease under this Agreement.

8. Diligence of Department. So long as Department is prevented by any process or injunction issued by any court or by any statutory stay, or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Landlord or Lessee, from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof, Department shall not be deemed for that reason to have failed to commence such proceedings or to have failed to prosecute diligently such proceedings, provided, however, that Department shall use reasonable efforts to contest and appeal the issuance or continuance of any such process, stay or injunction.

9. Condemnation and Insurance Proceeds.

a. Anything in the Lease notwithstanding, all fire and other hazard or casualty insurance proceeds shall be paid to Department to the extent required by the Regulatory Agreement and subject to the rights of senior mortgage holders. A Standard 438 BFU endorsement naming Department as mortgagee may be attached to the policy insuring the Property and the Development. In addition, in the event of any condemnation or partial condemnation, all condemnation award proceeds payable on account of such condemnation or partial condemnation shall be paid to Department to the extent required by the Regulatory Agreement, subject to the rights of holders of senior mortgages, if any.

b. During the term of the Loan, Department shall have the right to participate in any settlement or stipulation of judgment with respect to any condemnation proceeding entered into with the condemnation authority affecting all or any portion of the Property or any agreement to sell all or any portion of the Property in lieu of condemnation, and no such settlement, stipulation or agreement shall be made or entered into without Department's prior written consent. Department shall also have the right to participate in any settlement, discussion, and/or arbitration proceeding between Landlord and Lessee with respect to the apportionment or application of any condemnation award.

10. Certificate by Landlord. Within fifteen (15) calendar days after written request by Department, Landlord shall execute and deliver to Department or to any proposed purchaser or encumbrancer of Lessee's estate a certificate declaring (i) the existence of the Lease, or New Lease as the case may be, and amendments thereto, if any; (ii) the events of default under the Lease to the best knowledge of Landlord as of the date of the certificate; (iii) any other information relating to the condition of the Lease, the Property or the Development reasonably requested by Department; and (iv) that Landlord understands the recipient will rely on the certificate.

11. Notices. Notices and other communications required by this Agreement shall be delivered by messenger to the addresses provided below or sent by U.S Postal Service certified mail, return receipt requested, postage prepaid, addressed as follows:

To Department: Department of Housing and Community Development
Multifamily Housing Program
P.O. Box 952054
Sacramento, CA 94252-2054
Attn. MHP Program Manager
or:
1800 Third Street, Suite 390-4
Sacramento, CA 95814

Attn: MHP Program Manager

To Landlord: _____

To Lessee: _____ Limited Partnership

These addresses may be changed by a notice given in the same manner. Notices shall be effective on receipt.

12. Department's Rights Against Lessee. Nothing in this Agreement shall limit or restrict Department's rights and remedies under the Note, the Trust Deed, the Regulatory Agreement, or any other agreement between Department and Lessee.

13. Successors and Assigns. This Agreement shall inure to the benefit of and bind the successors and assigns of Department, Landlord and Lessee.

14. Uninsured Hazard. Landlord agrees that neither Department nor any person acquiring the Property or a portion of the Leasehold pursuant to a foreclosure under the Trust Deed, or deed in lieu of foreclosure, nor the Lessee under a New Lease pursuant to section 6 hereof, nor any successive owner of a portion of the Leasehold after such foreclosure or New Lease shall have any obligation hereunder or under the Lease or new lease to repair or reconstruct any damage or loss to the Development which is due to a hazard not required to be covered by insurance under the Lease.

15. Duty to Repair. Landlord agrees that if Department, its nominee, or its successor-in-interest succeeds to Lessee's leasehold interest in the Property and if the Development on the Property shall have been or become materially damaged before or after the date of such acquisition, Department's, its nominee's, or its successor-in-interest's obligation, if any, to repair, replace or reconstruct the Development shall in any such event be limited to the greater of: i) the amount of the net insurance proceeds received by Department by reason of that damage or ii) the amount the Department would be entitled to if in compliance with the minimum insurance requirements of Lessee under the Lease.

16. Options. Landlord and Lessee agree that Department may exercise any option to extend the term of the Lease or to purchase any interest in the Property which is granted to Lessee under or in connection with the Lease.

17. Limitation on Liability. If Department agrees to be bound by the terms of the Lease, or in the event of any Transfer to a Transferee, neither Department nor Transferee shall have any obligation under the Lease with respect to any liabilities, obligations, losses, damages, fines, penalties, claims, demands, suits, actions, causes of actions, charges, judgments, costs, and expenses (including architects' and attorneys' fees and court costs) arising out of or resulting from acts, omissions, circumstances or events occurring before or existing at the time of such Transfer or Department's agreement to be bound by the Lease.

18. Conflict With Lease. The provisions herein are intended to be supplementary to, and not in derogation of, the parties' rights and obligations contained in the Lease (including all of Department's rights under the Lease as a leasehold mortgagee), but in the event of any conflict or inconsistency between the terms of the Lease and the terms of this Agreement, the terms of this Agreement shall govern and control, and the Lease shall be deemed to be modified hereby.

Landlord and Lessee acknowledge that Department is relying on the foregoing representations, warranties, covenants and agreements of the undersigned in making the Loan to Lessee, and warrants and affirms to and for the benefit of Department that each of those representations is true, correct and complete as of this date.

Dated: _____, 200__

Department:

Department of Housing and Community Development,
a public agency of the State of California

By: _____
Nadine Ford, Manager
Multifamily Housing Program

Dated: _____, 200__

Landlord:

_____, _____

By: _____

Name: _____

Title: _____

Dated: _____, 200__

Lessee:

_____ Limited Partnership,
a California limited partnership

By: _____ Corporation,
Its General Partner

By: _____

Name: _____

Title: _____